

1748. July 30.

RUTHERFORD.

It was found, upon a verbal report, that a sale might be pursued upon the act 1695, although the pursuer was served heir in general *cum beneficio*, he not being served in the lands. See No 23. *infra*.

*Fol. Dic. v. 3. p. 262. Kilkerran, (HEIR CUM BENEFICIO.) No 5. p. 240.*

No 21.

1749. July 12. SIR KENNETH M'KENZIE and his Factor, Petitioners.

No 22.

SIR KENNETH M'KENZIE of Grandvile, happening to be in Minorca when his brother Sir George M'Kenzie died without issue, as soon as he got notice of his brother's death, sent instructions to his friends in Scotland, to make up his titles in the proper manner, so as to save his person and proper effects from the defunct's debts. Accordingly inventories were sent him to be signed in order to his service as heir *cum beneficio*; but by certain disappointments, these inventories not being returned signed till the year was out, application was made in the name of Sir Kenneth and his factor for the authority of the Lords to the Sheriff to take in and record the inventories; which the Lords 'granted,' reserving to all parties having interest to object to the effect thereof as accords.

*Kilkerran, (HEIR CUM BENEFICIO.) No 6. p. 240.*

1751. February 27.

BLAIR, Petitioner.

PATRICK BLAIR, heir served *cum beneficio* to his brother Andrew Blair of Corbs, having pursued a sale as apparent heir, an act was pronounced by the Ordinary, before whom it came, in common form; and he now having applied by petition to the Lords, representing that the proof brought was not full, and craving a new diligence, a doubt was stirred on the Bench, How far it was competent for an heir served *cum beneficio* to pursue a sale as apparent heir; and precedents having been alleged for the pursuer, the case was deferred till this day, that the precedents might be condescended on.

Accordingly two precedents were found, one of the 14th July 1742, Robert M'Doual, second son to Ann Johnston of Kelton, and of John M'Doual of Logan her husband, against the Creditors of Robert Johnston of Kelton, (*See APPENDIX*), where, on the verbal report of the Lord Elchies, it was found, "That the said Robert M'Doual, disponee from his mother, who had been heir served *cum beneficio* to Robert Johnston of Kelton, her brother, was entitled to bring the subjects of the inventory to a sale on the act 1695;" which was a step further, as the pursuer was only assignee from his mother, the heir served. The other was likewise on the verbal report of the same Ordinary, no longer ago than on the 30th July 1748, (No 21. *supra*), when Andrew Ru-

No 23.

An heir *cum beneficio* may pursue a sale on the act 1695 as apparent heir.